

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

HOMER JONES,)
Petitioner,)
vs.) NO. CIV-18-0031-HE
WARDEN BEAR,)
Respondent.)

ORDER

Petitioner, a state prisoner appearing *pro se*, filed this action seeking habeas relief under 28 U.S.C. § 2241. Pursuant to 28 U.S.C. §636(b)(1)(B),(C), the matter was referred to Magistrate Judge Suzanne Mitchell for initial proceedings. She has issued a Report and Recommendation (“Report”) recommending that the petition be summarily dismissed without prejudice. Petitioner has filed an objection.

In her Report, the magistrate judge concludes that petitioner fails to state a cognizable claim under § 2241 in the first two grounds of his petition because he is attacking the validity of his conviction, rather than the legality of his detention. Licon v. Ledezma, 638 F.3d 1303, 1311 (10th Cir. 2011) (“A petition under . . . § 2241 attacks the execution of a sentence rather than its validity. . . . A 28 U.S.C. § 2255 petition attacks the legality of detention.”) (internal citation marks omitted). The magistrate judge concludes that petitioner’s two remaining claims, based on alleged violations of state law, also fail to state claims cognizable in a federal habeas action.

In his objection, petitioner makes various assertions, including that he is entitled to a hearing, that he is disabled, and that he has been denied access to legal assistance and a

law library. He does not, though, address the deficiencies in his claims which the magistrate judge thoroughly explained.

Petitioner is not entitled to a hearing and the problems with his claims are such that, even if given access to a law library or provided with legal assistance, it is doubtful they could be corrected.¹

Accordingly, having conducted the required *de novo* review, the court **ADOPTS** Magistrate Judge Mitchell's Report and Recommendation. The petition for writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE**. A certificate of appealability is **DENIED** as the court concludes petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED

Dated this 11th day of April, 2018.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE

¹ Petitioner did not request additional time to prepare his objection because of his disability or lack of access to legal assistance.